

OGC 76-1137

78-0170/5

MEMORANDUM FOR: Director of Logistics

FROM :

[Redacted]  
Associate General Counsel

STATINTL

SUBJECT : CIA Physical Conditioning and Recreational Facilities

Jim:

1. With regard to the proposal to construct physical conditioning and recreational facilities within the Headquarters compound, you posed the following questions:

a. May the Agency accept a monetary gift from EAA and use it in contracting for the construction of the Phase II facilities ( a football/ soccer field, a softball field, a handball court and a basketball court)?

ANSWER: No. The reason for this negative is that numerous Comptroller General decisions have held that absent express legislative authority a government agency may not accept a gift from a private source. EAA is a private entity incorporated under the laws of Virginia. Further, since the Agency does not now have an appropriation to fund such an undertaking we would be in contravention of the statutory prohibition against creating obligations in excess of or in advance of appropriations (31 U.S.C.A. 665). See also 41 U.S.C.A. 11 and 41 U.S.C.A 12.

b. May the Agency permit EAA to contract for the construction of the Phase II facilities using EAA funds?

ANSWER: No. The prohibition against the receipt of gifts would apply here, notwithstanding that the gift would take the form of a baseball field. Further, since we cannot presume that EAA would fund the facility's maintenance expenses in perpetuity, we could be accused of creating a charge against an anticipated appropriation.

c. May EAA make a monetary gift to the CEAF and may the Agency use the CEAF, as augmented by the EAA gift, to fund the construction of the Phase II facilities?

NOT SO -  
WASHINGTON AS  
EAA HAS  
SAID THEY  
WILL ACCEPT  
THE MONEY  
&  
CONSTRUCT  
IN OUR BEHALF

ANSWER: No. According to [ ]

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A Central Employees Activities Fund has been established from excess profits of existing self-sustaining personnel services or recreational activities and net proceeds from the termination and liquidation of the assets of such activities.

Even to concede that the funds in the CEAF may not be appropriated funds is not to characterize them as being nonappropriated funds as that term may be used when discussing funds generated by the nonappropriated fund activities which support the military. But noting that these funds have been generated by "personnel service and recreational activities... established and operated by the Agency...." [ ], and that their use is "[s]ubject to the approval of the Deputy Director for Administration ...for the general benefit and morale of Agency personnel, such as recreational activities, establishment of new self-sustaining activities, or providing financial relief to existing self-sustaining activities"

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[ ] it seems quite apparent that those funds are at least Government funds and further that they are in essence trust funds, being held in an Agency account. EAA's gift to the CEAF would be tantamount to a gift to the Agency. [ ] does not contemplate that the CEAF is to be augmented by donations from private sources. Further, noting such references in [ ] as "field installations," "chiefs of field installations" and "factors peculiar to the mission of the Agency [such as] isolated location of the installation," it could be argued that using the CEAF to construct recreational facilities for Headquarters personnel would breach the trust with which these funds are impressed.

d. May CEAF monies be used by the Agency to underwrite a liability of EAA that might exceed the amount of its gift?

ANSWER: No. The considerations mentioned in subparagraph c above would suggest that this would be a donation to an ineligible party for an ineligible purpose.

f. May the Agency use CEAF funds in contracting for the construction of the Phase III facilities (tennis courts)?

ANSWER: No. See the discussion in subparagraph c.

g. May the Agency accept from the EAA the \$20,000 it has spent to renovate the Headquarters space occupied by the EAA store?

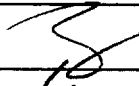


ANSWER: Yes. But since the renovation costs were charged to appropriated funds, the reimbursement should be returned to miscellaneous receipts.

2. Sorry about being so negative.



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2	Mr. Malanick	2 MAR 1978	
3	Mr. Blake		
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<input type="checkbox"/>	APPROVAL	<input type="checkbox"/>	DISPATCH
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